

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 11809.0004.00000	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 10/590,002 First Named Inventor Joseph DEUTSCH et al. Art Unit 2617	Filed July 9, 2007 Examiner M. Wyche

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.


I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☐ attorney or agent of record.
Registration number _____

☒ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 62,945


 Signature

 Ryan M. Crockett
 Typed or printed name

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 November 14, 2011
 Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

<input type="checkbox"/> *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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REASONS FOR REQUEST FOR REVIEW

Claims 62, 64-67, 76-78, and 84 are pending, at least twice rejected, and are the subject of this Pre-Appeal Brief Request for Review. In the Amendment After Final Rejection filed October 7, 2011, Applicants proposed canceling claims 40-47, 49-51, 68-73 and 83 without prejudice to, or disclaimer of, the subject matter recited in those claims. In the October 25, 2011 Advisory Action, the Examiner indicated that the proposed claim amendments will be entered.

In the final Office Action dated July 11, 2011, claims 62, 64-67, 76-78 and 84 were rejected under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2006/0031297 to Zuidema and U.S. Patent Application Publication No. 2005/0075093 to Lei et al. (Lei), and further in view of U.S. Patent Application Publication No. 2004/0198279 to Antilla et al. (Antilla). Applicants respectfully submit that the legal and factual bases of this prior art rejection contain clear legal and factual deficiencies.

Independent Claim 62

Applicants respectfully traverse the rejection of the claims over Zuidema, Lei and Antilla, because a *prima facie* case of obviousness has not been established.

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements." *M.P.E.P.* § 2142, 8th Ed., Rev. 8 (July 2010) (*internal citation and inner quotation omitted*). "[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . .

[a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). In rejecting a claim, "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III).

A *prima facie* case of obviousness has not been established in this case at least because the applied references fail to teach or suggest all the recitations of the independent claims.

Independent claim 62 recites, as part of the method for employing a personalized MMS message to create and display an electronic content guide (ECG), "employing at least some of the personalized parameters by the communication appliance to create a personalized structure of the ECG." Although of different scope than claim 62, independent claims 76 and 84 recite, in part, similar features as the above-quoted features of independent claim 62.

As a non-limiting example of some of the claim features, page 25 of the pending application describes two different ECG structures for two different users. The first user may have a format of presentation of the ECG as a personalized icon based format, as illustrated in Fig. 6A. The second user may have a format of presentation of the ECG as a personalized menu based format, as illustrated in Fig. 6B.

Zuidema and Lei do not disclose the above-quoted features of independent claim 62, and the Examiner acknowledges this fact on pages 7 and 8 of the Office Action. Instead, the Examiner relies on Antilla to allegedly overcome the acknowledged deficiencies of Zuidema and Lei. However, as explained below, Antilla fails to overcome the deficiencies of Zuidema and Lei.

In the Office Action, the Examiner cited only Fig. 2 of Antilla in support of the assertion that Antilla discloses employing at least some of the personalized parameters by the communication appliance to create a personalized structure of the ECG and displaying the personalized ECG by the communication appliance. While Fig. 2 of Antilla may generically illustrate an ECG displayed on a device, the figure does not disclose employing at least some of the personalized parameters by the communication appliance to create a personalized structure of the ECG. That is, the general illustration of an ECG in Fig. 2 of Antilla does not provide any information about how the structure of the displayed ECG was created. In fact, the teaching of employing at least some of the personalized parameters by the communication appliance to create a personalized structure of the ECG is not found in or suggested by Antilla.

The Advisory Action further cited paragraphs [0037] and [0042] of Antilla to allegedly support the original assertions in the final Office Action regarding the teachings of Antilla. The additional portions of Antilla, however, also do not disclose the claimed "employing at least some of the personalized parameters by the communication appliance to create a personalized structure of the ECG; and displaying the personalized ECG by the communication appliance," as recited in independent claim 62.

Antilla discloses that radio bookmarks 34 may be stored in memory 22 and may also be programmed and selected by the user (see paragraph [0037]). However, being programmable and selectable by the user does not constitute creating a personalized structure of an ECG using personalized parameters received in an MMS message. This disclosure of Antilla refers to customizing information stored in the handles or identifiers

of the radio bookmarks 34. According to Antilla, the handles or identifiers point to various resources such as files, IP addresses, URLs, and the like (see paragraph [0037]). Thus, the handles or identifiers of the radio bookmarks 34 are not related to a structure of an ECG.

Antilla also discloses that a user can send an SMS or MMS to the selected radio station requesting information about the current programming being broadcast (see paragraph [0042]). The radio station may send a return SMS or MMS containing the information about the current programming being broadcast, and the information may be displayed to the user (see paragraph [0042]). However, there is nothing personalized about the SMS or MMS received from the radio station. It is only an SMS or MMS containing information about the radio broadcast, the same as would be sent to any requesting user. Also, the ECG has already been created when the SMS or MMS message is received from the radio station, and no additional, personalized ECG is created based on the received information. Thus, the SMS or MMS disclosed in Antilla is not personalized.

Accordingly, Antilla does not disclose "employing a personalized MMS message to create and display an electronic content guide (ECG)," or "employing at least some of the personalized parameters by the communication appliance to create a personalized structure of the ECG," as recited in independent claim 62, and similarly recited in independent claims 76 and 84. Because the reference do not disclose all of the claim features, the Office Action has not properly determined the scope and content of the prior art and ascertained the differences between the claimed invention and the prior art, as required.

Independent claims 62, 76 and 84, as well as claims 64-67, 77 and 78 which depend therefrom, are, therefore, patentable over the combination of Zuidema, Lei and Antilla. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 62, 64-67, 76-78 and 84.

Conclusion

Based on the foregoing, the applied combination of references cannot reasonably be considered to have rendered obvious the combinations of all of the features recited in independent claims 62, 76 and 84, or the claims depending therefrom. As such, the rejection asserted in the final Office Action has been maintained based on clear legal and factual deficiencies. Because the applied references fail to disclose, and would not have rendered obvious, the claim features, withdrawal of the Final Rejection and allowance of this application are respectfully requested.